

New Jersey Public Broadcasting Authority

Meeting of the Members of the Board

February 27, 2013 at 4:00 p.m.

Department of the Treasury
Conference Room and by Conference Call
New Jersey Statehouse
125 W. State Street
Trenton, NJ 08608

MINUTES

Andrew Sidamon-Eristoff, Chair, Presiding

Minutes of the meeting of the New Jersey Public Broadcasting Authority (“NJPBA” or “Authority”) held at the Conference Room of the Department of the Treasury at the New Jersey Statehouse, 125 W. State Street, Trenton, New Jersey, 08608, and by Conference Call on February 27, 2013 at 4:07 p.m.

1. CALL TO ORDER, OPEN PUBLIC MEETINGS ACT STATEMENT AND ROLL CALL

Chair of the NJPBA Board, Mr. Andrew Sidamon-Eristoff, called the meeting to order. Chair Sidamon-Eristoff read the Open Public Meetings Act statement as follows: In accordance with the provisions of the Open Public Meetings Act of the State of New Jersey, notice of this meeting has been filed with the Office of the Secretary of State, has been posted on the appropriate bulletin board maintained for such purposes by the Authority, distributed by press release to two daily newspapers in New Jersey, and announced on NJTV. Notice was made in advance of this meeting.

Chair Sidamon-Eristoff then requested a roll call. NJPBA Members present and participating at the meeting were Chair Sidamon-Eristoff, Anthony Della Pelle (*via phone*) and John Inglesino (*via phone*). Also present and participating were Kavin K. Mistry, Assistant Attorney General; John Blair, NJPBA Executive Director; and Nichol Gee, NJPBA Office Manager (*taking minutes*). Steven Petrecca, Assistant State Treasurer; Brett Tanzman, Governor’s Authorities Unit; Amy Herbold, Governor’s Authorities Unit; and Rick Williams, NJPBA Director of Engineering, were also present.

2. RESOLUTION APPROVING THE MINUTES OF THE JANUARY 28, 2013 MEETING

Chair Sidamon-Eristoff asked for a motion to approve a Resolution Approving the Minutes of the January 28, 2013 Meeting. Mr. Della Pelle made a motion to approve the resolution. Mr. Inglesino seconded the motion. Chair Sidamon-Eristoff asked for a roll call vote. The motion to approve the Resolution Approving the Minutes of the January 28, 2013 Meeting was voted upon with two votes in the affirmative (Mr. Della Pelle and Chair Sidamon-Eristoff). Mr. Inglesino abstained. As the requisite number of affirmative votes to approve the Resolution Approving the Minutes of the January 28, 2013 Meeting was not met, the Resolution did not pass and was carried forward to the next meeting of the Board.

3. RESOLUTION OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY AMENDING THE SCOPE OF WORK OF THE INDEPENDENT AUDITOR

RESOLUTION OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY AMENDING THE SCOPE OF WORK OF THE INDEPENDENT AUDITOR

WHEREAS, the New Jersey Public Broadcasting Authority (the "Authority") was created pursuant to the New Jersey Public Broadcasting Authority Act of 1968, L. 1968, c. 405, as amended (the "Original Act"), including by the New Jersey Public Broadcasting System Transfer Act, L. 2010, c. 104 (the "Transfer Act," and together with the Original Act, the "Act"); and

WHEREAS, the Authority is constituted as an instrumentality of the State exercising public and essential governmental functions; and

WHEREAS, on June 27, 2012, the Authority approved the engagement of Mercadien, P.C. (the "Auditor") to serve as the independent auditor to the Authority for a three year term in connection with the annual audit of the Authority for the fiscal years ending June 30, 2012, June 30, 2013 and June 30, 2014, with two options to extend the engagement at the sole determination of the Authority for one (1) additional year each in connection with the annual audit of the Authority for the fiscal years ending June 30, 2015 and June 30, 2016 under the same terms and conditions as set forth in the Request for Quote for Independent Audit Services issued by the Authority on June 8, 2012 (the "RFP"); and

WHEREAS, in the course of conducting the audit of the Authority for the fiscal year ended June 30, 2012 ("Fiscal Year 2012 Audit"), the Auditor was required to assist the Authority in making a substantial amount of journal entries (the "Additional Journal Entries") necessitated by the change in programming and management structure of the Authority as a result of the Programming and Services Agreement dated as of July 1,

2011, entered into between the Authority and Public Media NJ, Inc. (the “PMNJ Agreement”);

WHEREAS, in order to qualify for Corporation for Public Broadcasting (“CPB”) grant funding, amongst numerous requirements, the Authority and the former Foundation for New Jersey Public Broadcasting would submit a joint audited financial statement, audited based on generally accepted accounting principles (“GAAP”);

WHEREAS, as a result of the PMNJ Agreement and the change in the Authority’s management and operating model and the absence of sufficient elements of “control,” as that term is used in GAAP, between the Authority, PMNJ and WNET, the Authority cannot submit a joint audited financial statement under GAAP to CPB;

WHEREAS, the Authority, PMNJ and WNET have worked with CPB to resolve this inability to submit a joint audited financial statement under GAAP;

WHEREAS, it has been determined that a non-GAAP special report combining the financial statements of the Authority, PMNJ and WNET would be sufficient for CPB purposes (the “Special CPB Report”);

WHEREAS, the Additional Journal Entries and the Special CPB Report (the “Additional Services”) provided by the Auditor were necessary, but beyond the scope of work requested by the Authority in the RFP and its engagement of the Auditor to provide independent auditor services to the Authority;

WHEREAS, as a result of Additional Services, the Auditor has requested an increase in its agreed upon fee for the Fiscal Year 2012 Audit as set forth in its response to the RFP and accepted by the Authority of \$4,300 for the Additional Journal Entries and \$2,405 for the Special CPB Report (collectively, the “Requested Increases”);

WHEREAS, changes in the scope of work and increases in compensation as a result of such scope of work is permitted pursuant to the RFP; and

WHEREAS, the Audit Committee has reviewed these Requested Increases from the Auditor and recommends that the Members of the Authority approve these Requested Increases.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY AS FOLLOWS:

1. The Authority hereby approves increase in its agreed upon fee for the Auditor for the Fiscal Year 2012 Audit as set forth in the Auditor’s response to the RFP and accepted by the Authority of \$4,300 for the Additional Journal Entries and \$2,405 for the Special CPB Report.

2. The Authority hereby authorizes its Executive Director to do all such acts and things as may be necessary or desirable in connection with the payment of the Requested Increases.
3. This Resolution shall take effect upon adoption in accordance with the Act.

Chair Sidamon-Eristoff asked for a motion to approve a Resolution of the New Jersey Public Broadcasting Authority Amending the Scope of Work of the Independent Auditor. Mr. Della Pelle made the motion to approve the resolution. Mr. Inglesino seconded the motion. Mr. Della Pelle, Chair of the Audit Committee, stated that the Audit Committee recommended approval of this resolution. Chair Sidamon-Eristoff asked for a roll call vote. The motion to approve the Resolution of the New Jersey Public Broadcasting Authority Amending the Scope of Work of the Independent Auditor was voted upon and approved unanimously.

4. RESOLUTION OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY ACCEPTING THE FISCAL YEAR 2012 AUDIT REPORT

RESOLUTION OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY ACCEPTING THE FISCAL YEAR 2012 AUDIT REPORT

WHEREAS, the New Jersey Public Broadcasting Authority (the "Authority") was created pursuant to the New Jersey Public Broadcasting Authority Act of 1968, L. 1968, c. 405, as amended (the "Original Act"), including by the New Jersey Public Broadcasting System Transfer Act, L. 2010, c. 104 (the "Transfer Act," and together with the Original Act, the "Act"); and

WHEREAS, the Audit Committee established pursuant to Article IX, Section 1 of the By-Laws and in accordance with the requirements of Executive Order No. 122 (McGreevey 2004) ("EO 122") has reviewed the Independent Auditor Report from the firm of Mercadien, P.C., the Independent Auditor to the Authority, for Fiscal Year 2012 ("Fiscal Year 2012 Audit Report"); and

WHEREAS, the Audit Committee recommends acceptance of the Fiscal Year 2012 Audit Report by the Authority; and

WHEREAS, the Authority desires to accept the Fiscal Year 2012 Audit Report.

NOW, THEREFORE, BE IT RESOLVED BY THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY AS FOLLOWS:

1. The Authority hereby accepts the Fiscal Year 2012 Audit Report from the firm of Mercadien, P.C., the Independent Auditor to the Authority.

2. This resolution shall take effect immediately in accordance with the Act.

Chair Sidamon-Eristoff asked for a motion to approve a Resolution of the New Jersey Public Broadcasting Authority Accepting the Fiscal Year 2012 Audit Report. Mr. Della Pelle made the motion to approve the resolution. Mr. Inglesino seconded the motion. Mr. Della Pelle stated that the Audit Committee reviewed the Fiscal Year 2012 Audit Report with Mercadien, P.C. and unanimously recommended acceptance of the Fiscal Year 2012 Audit Report by the Authority Board. Chair Sidamon-Eristoff asked for a roll call vote. The motion to approve the Resolution of the New Jersey Public Broadcasting Authority Accepting the Fiscal Year 2012 Audit Report was voted upon and approved unanimously.

5. RESOLUTION OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY APPROVING A CHANNEL CARRIAGE AGREEMENT WITH TELEVISION FOOD NETWORK, G.P. AND A WAIVER OF MUST CARRY RIGHTS AND OBLIGATIONS WITH RESPECT TO WNJN(TV), MONTCLAIR ON TIME WARNER CABLE OF NEW YORK SYSTEMS

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WHEREAS, the New Jersey Public Broadcasting Authority (the "Authority") was created pursuant to the New Jersey Public Broadcasting Authority Act of 1968, L. 1968, c. 405, as amended (the "Original Act"), including by the New Jersey Public Broadcasting System Transfer Act, L. 2010, c. 104 (the "Transfer Act," and together with the Original Act, the "Act"); and

WHEREAS, pursuant to the Transfer Act, the Authority entered into a Programming and Services Agreement (the "PMNJ Agreement") dated as of July 1, 2012, with Public Media, NJ, Inc. ("PMNJ"), whereby PMNJ has agreed to provide programming, including New Jersey-centric news, public affairs and information programming on the stations (WNJT(TV) Trenton, WNJB(TV) New Brunswick, WNJN(TV) Montclair, WNJX(TV) Camden, W36AZ Sussex, W49BE Hackettstown and W43CH Belvidere)(collectively, the "Stations") in the State of New Jersey's (the "State") public broadcasting system;

WHEREAS, PMNJ is a New Jersey not-for-profit corporation, with WLIW, L.L.C., as its sole member; the sole member of WLIW is WNET.ORG ("WNET");

WHEREAS, pursuant to Section 1.3(b) of the PMNJ Agreement, PMNJ is responsible for administering the Stations, including WNJN(TV), relationships with cable systems and PMNJ shall retain all revenues that result from all such relationships and arrangements for use in the development, production and distribution of Programming (as such term is defined in the PMNJ Agreement) and the performance of Services (as such term is defined in the PMNJ Agreement) as provided in the PMNJ Agreement;

WHEREAS, since 1995, the Authority has been a party to an agreement with Television Food Network, G.P. ("TV Food"), whereby the Authority agreed to waive its must carry rights and Time Warner Cable, Inc.'s ("Time Warner") must carry obligations with respect to the broadcast signals of WNJN(TV) Montclair on the Time Warner Cable of New York City systems (the "Previous Waivers") and in consideration of such Previous Waivers, TV Food agreed to pay certain compensation to the Authority for each year of the agreement;

WHEREAS, pursuant to Section 1.3(b) of the PMNJ Agreement, PMNJ has negotiated a new Channel Carriage Agreement (the "Agreement") with TV Food and a new waiver of must carry rights of the Authority and must carry obligations of Time Warner with respect to the broadcast signals of WNJN(TV) Montclair on the Time Warner Cable of New York City systems for a three year period beginning January 1, 2012 and ending December 31, 2014 (the "New Waiver");

WHEREAS, the term of the Agreement is for three years beginning January 1, 2012 and ending December 31, 2014, with TV Food having the right to request one (1) renewal term of the Agreement to cover the period beginning January 1, 2015 and ending December 31, 2017, provided the Authority is able to deliver a waiver covering the renewal term;

WHEREAS, once the Agreement is executed and the New Waiver is delivered, the Authority would receive and pass through to PMNJ the revenue received TV Food in accordance with Section 1.3(b) of the PMNJ Agreement;

WHEREAS, in February 2013 TV Food paid NJPBA \$600,000, which payment constituted the payment due to the NJPBA for the period of January 1, 2012 through December 31, 2012 in accordance with the September 14, 1995 letter agreement between TV Food and the NJPBA, as amended;

WHEREAS, once the Agreement is executed and the New Waiver is delivered, the Authority expects to receive \$400,000 for calendar year 2013, \$400,000 for calendar year 2014, and if the renewal term is exercised, \$250,000 for calendar year 2015, \$250,000 for calendar year 2016 and \$200,000 for calendar year 2017;

WHEREAS, it is the Authority's best interests to enter into the Agreement and deliver the New Waiver; and

WHEREAS, the Authority wishes to authorize entry into the Agreement and delivery of the New Waiver.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY AS FOLLOWS:

1. The Members of the Authority hereby approve the Agreement and the New Waiver attached hereto as Exhibit A, in substantially the form presented at this meeting and authorize the Executive Director to execute and deliver the Agreement and the New Waiver, with such changes, revisions and omissions in consultation with the Office of the Attorney General.

2. The Members of the Authority hereby approve the execution and delivery of any documents necessary to effectuate and implement the Agreement and the New Waiver, and authorize the Executive Director to take any and all action necessary to effectuate and implement the Agreement and the New Waiver, including, but not limited to, execution and delivery of documents in connection therewith.

3. This resolution shall take effect immediately in accordance with the Act.

Chair Sidamon-Eristoff asked for a motion to approve the Resolution of the New Jersey Public Broadcasting Authority Approving a Channel Carriage Agreement with Television Food Network, G.P. and a Waiver of Must Carry Rights and Obligations with Respect to WNJN(TV), Montclair on Time Warner Cable of New York Systems. Mr. Inglesino made the motion to approve the resolution. Mr. Della Pelle seconded the motion. Chair Sidamon-Eristoff asked for a roll call vote. The motion to approve the Resolution of the New Jersey Public Broadcasting Authority Approving a Channel Carriage Agreement with Television Food Network, G.P. and a Waiver of Must Carry Rights and Obligations with Respect to WNJN(TV), Montclair on Time Warner Cable of New York Systems was voted upon and approved unanimously.

6. OTHER BUSINESS (*if any*)

Chair Sidamon-Eristoff asked if there was any other business to discuss. No further discussion occurred.

7. ADJOURNMENT

Chair Sidamon-Eristoff thanked everyone for their participation and asked for a motion to adjourn the meeting. Mr. Della Pelle made a motion to adjourn the meeting. Mr. Inglesino seconded the motion. The motion was voted upon and approved unanimously. The meeting was adjourned at 4:11 p.m.